

DECISION

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**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

FILE: B-209864**DATE:** January 27, 1983**MATTER OF:** Dan Caputo Company and Wagner Construction Company, a Joint Venture**DIGEST:**

Federal grant complaint is dismissed when the material issues are pending before a court of competent jurisdiction and the court has not expressed an interest in obtaining the views of GAO.

Dan Caputo Company and Wagner Construction Company, a Joint Venture (Caputo-Wagner), complains about the dismissal of a protest filed by it with the Environmental Protection Agency (EPA). Caputo-Wagner's EPA protest concerned action taken by the Russian River County Sanitation District (RRCSD), a recipient of EPA grant funds for the construction of a wastewater collection system in the Russian River area of California. Caputo-Wagner complains that EPA acted improperly in dismissing its protest in a summary fashion. Because issues raised in the case at hand are substantially similar to those raised in a complaint filed by Caputo-Wagner against EPA and several other parties in the United States District Court for the Northern District of California, we dismiss the complaint.

EPA made the grant to RRCSD in 1972, pursuant to the Clean Water Act of 1977. On May 1, 1979, RRCSD awarded a construction contract to Caputo-Wagner, but on or about September 1, 1982 RRCSD terminated the contract purportedly due to Caputo-Wagner's failure to comply with the project plans and specifications. Caputo-Wagner's position is that the contract termination was wrongful and that it is owed approximately \$1,900,000 by RRCSD.

On June 16, 1982 RRCSD published a public notice inviting bids for corrective work necessary to make the wastewater system operable. RRCSD intends to fund this corrective work with the remaining \$900,000 of unspent EPA grant money. On June 23, 1982 Caputo-Wagner filed a protest with EPA against the solicitation for corrective work, contending that because Caputo-Wagner was entitled to the remaining grant funds, the corrective work could not be

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funded by RRCSD. Caputo-Wagner also contended that RRCSD was acting beyond its authority and contrary to various Federal regulations. On July 6, 1982 Caputo-Wagner filed a supplementary protest with EPA, alleging that many of the provisions of the corrective work solicitation were contrary to EPA regulations and California law.

On July 20, 1982 EPA denied Caputo-Wagner's protest on the grounds that Caputo-Wagner was not an interested party with standing to challenge, through the mechanism of a bid protest, RRCSD's decision to fund corrective work with the remaining grant funds and that Caputo-Wagner's supplemental protest was untimely because it was not filed within 1 week after the basis of the protest was known. On July 26, 1982 Caputo-Wagner filed a request for reconsideration with EPA, which EPA denied on November 1, 1982.

On November 17, 1982 Caputo-Wagner filed a complaint in this Office, alleging that EPA's decision to deny Caputo-Wagner's bid protest and request for reconsideration summarily "was erroneous as a matter of fact and law, and violated EPA procurement regulations and public policy of open and free competition." Caputo-Wagner complains that EPA violated Caputo-Wagner's procedural rights under EPA bid protest regulations, made serious factual errors, erroneously determined that Caputo-Wagner's supplemental protest was untimely, erroneously held that the protest involved solely issues of contract performance, and ignored violations of Federal law and regulations.

On December 10, 1982 Caputo-Wagner filed a complaint on the matter in the United States District Court for the Northern District of California against EPA and several other defendants, seeking a declaratory judgment, mandamus and injunctive relief.

The issues presented in Caputo-Wagner's complaint in this Office are the same as those raised by Caputo-Wagner in its complaint filed in the District Court for the Northern District of California. It is the policy of our Office not to decide protests or complaints where the material issues are pending before a court of competent jurisdiction unless the court requests, expects, or otherwise expresses an interest in our decision. Space Age Engineering, Inc., B-205594, January 18, 1982, 82-1 CPD 40. Here, there has been no such expression of interest

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by the court in obtaining the views of our Office.
Accordingly, the protest is dismissed.

Harry R. Van Cleve
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Acting General Counsel